

U.S. Department of Labor

Office of Administrative Law Judges
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Issue Date: 27 August 2003

BALCA Case No.: 2003-INA-119
ETA Case No.: P2002-TN-04388684

In the Matter of:

BRITTON BRIDGE,
Employer,

on behalf of

LEOBARDO JIMENEZ,
Alien.

Appearance: Peter C. Ensign
for Employer and Alien
Chattanooga, Tennessee

Certifying Officer: Floyd Goodman
Atlanta, Georgia

Before: Burke, Chapman and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. In the above-captioned matter, Employer was informed that its offered wage rate was below the prevailing wage as determined by the State Department of Labor (“EDD”). (AF 40-41). Employer responded solely with a letter in which Employer argued his belief that the offered rate was a fair one. No other proof was offered.

It is well established that when challenging a CO’s prevailing wage determination, an employer bears the burden of establishing both that the CO’s determination is in error and that the employer’s

wage offer is at or above the correct prevailing wage. *See, e.g. PPX Enterprises, Inc.* 1988 -INA-25 (May 31, 1989)(*en banc*). Employer's bare assertion does not amount to such proof. *Carl Joecks*, 1990-INA-406 (Jan. 16, 1992).

Accordingly, the following order shall enter:

IT IS ORDERED that the Certifying Officer denial of certification is hereby **AFFIRMED**

Entered at the direction of the panel by:

A

Todd R. Smyth
Secretary to the Board of Alien
Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary of Labor unless within 20 days from the date of service, a party petitions for review by the full Board of Alien Labor Certification Appeals. Such review is not favored, and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, NW, Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties, and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five, double-spaced, typewritten pages. Responses, if any, shall be filed within 10 days of service of the petition and shall not exceed five, double-spaced, typewritten pages. Upon the granting of the petition the Board may order briefs.